IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11275 of 2002

Date of Decision: 29-09-2004

KV RANGA REDDY

Versus

D G BSF, FHQ BSF

(For Full Cause Title, See Next Sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K. Rathod, Judge

Whether approved for reporting?

For the petitioner:

MR. A.M. PARIKH

For the re

MRS.MANISHA LAVKUMAR SHAH, Learned Additional Standing Counsel for the Central Government

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Petitioner was deployed in anti-naxalite duty in Balasour (Orissa). Border Security Force (BSF) vehicle in which he was travelling met with accident with civil vehicle. Petitioner sustained multiple injuries over face and right foot. He was taken to Medical College

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Whether Reporters of Local Papers may be allowed to see the Judgment?

Hospital, Kattak for treatment. It was diagnosed to be a case of crush injury on right foot and fracture on a nasal bone. After treatment for about a month, he was shifted to BSF Hospital, Kadmatla. There, he was treated in Orthopedic Department, then Medical College Hospital, Siliguri (North Bengal), till 1994. Respondents started SCOI proceedings, accident having taken place while he was on duty.

2. Petitioner was examined by the Medical Board and put in CEE `P' category. He joined the duty in G Branch in border, in spite of the specific opinion and also in Srinagar while in 3 Bn BSF, given several operations and worked to the satisfaction of the superiors, given suitable certificate by 35 Bn BSF, and the DIG BSF Gujarat State also recommended for suitable certificate.

3. The Medical Board placed him in S.1 and also in S1, H1, A3, L `P' and E1, thereby declaring unfit person, which is contrary to petitioner's Health Card and examination by Board on 05-02-2002. Petitioner was issued notice for invalid person as per the report of Medical Board. The representation against the action failed.

4. Petitioner challenged the action and sought stay against the respondents' action. By order dated 18-11-2002, respondents were restrained from relieving the petitioner from service, thereby petitioner continued in service. By order dated 20-01-2003, respondents have been directed to pay past as well as future salaries to the petitioner. Petitioner superannuated on 31-07-2004.

5. Short question for determination is what relief the petitioner is entitled to. Smt. Manisha Lavkumar, learned Additional Standing Counsel for the Central Government, submits that the petitioner is not entitled to any relief, be it continuation in service or payment of pension and salary; since petitioner was boarded out medically, he could not be adjusted in the Force; he continued pursuant to the Court order; even otherwise, he is entitled to full pension on completion of 33 years of service. The perusal of Medical Board proceedings disclose that petitioner suffered 35% permanent

disability while on Government bonafide duty. Medical Board found him fit for civil employment on May 18, 2002. Same Medical Board found him unfit for service of any kind in the BSF in consequence of effects of CRUSH INJURY AT FOOT WITH FRACTURE NASAL BONE WITH NIDDM (UNCONTROLLED). Smt. Manisha Lavkumar submits that petitioner has been found fit for civil employment outside BSF, namely, in other Government Departments. We are unable to appreciate this submission. Petitioner may be unfit to work in field operation duties of BSF, but BSF has Offices where petitioner could be given alternative duty. When he is found fit for civil employment in other Departments, we fail to understand why he is not fit for employment in the Offices of the BSF. Notification under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, has been issued on September 10, 2002. Therefore, petitioner could be provided alternative assignment/work in the Office of BSF under Section 47 of the Act. Consequently, pursuant to Court direction, work was taken from him in that capacity till superannuation on 31-07-2004 when he reached the stage of superannuation. It is undisputed that petitioner remained in service from 17-11-2002 to 31-07-2004 and received payment for this period. Interim order dated 20-01-2003 was assailed in the Apex Court unsuccessfully. Consequently, whatever salary has been paid to the petitioner shall be taken to have been paid regularly and considered towards all retiral benefits admissible to the petitioner.

6. Therefore, the petition is allowed. Order dated 09-11-2002 is set aside. Respondents are directed to fix the pension of the petitioner taking into account the period from 17-11-2002 to 31-07-2004 and also allow him such other consequential benefits to which he may be found entitled as per law. Rule is made absolute.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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